

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

UNITED STATES OF AMERICA

v.

Criminal No. 5:11-cr-00082

THOMAS HARRAH

DEFENDANT'S MOTION FOR ISSUANCE OF RULE 17(c) SUBPOENA

Defendant, Thomas Harrah, by his counsel, moves this Court to enter an appropriate Order authorizing the issuance of a subpoena pursuant to Rule 17(c) of the Federal Rules of Criminal Procedure to secure the production of the defendant's employment file from his former employer, Performance Coal Company, LLC. In support of this Motion, the defendant states as follows:

(1) The defendant pled guilty to a two-count information which charged the defendant with a false statement on an MSHA document and false statements to federal agents while employed by Performance Coal Company, LLC, at the Upper Big Branch Mine.

(2) Defendant's employment file is needed in order for counsel to sufficiently and effectively represent the defendant at his upcoming sentencing.

(3) The defendant requests authorization to compel the records custodian of Performance Coal Company, LLC to produce the following records relating to their employment of the defendant:

Request No. 1: A copy of all employment records for Thomas Harrah, DOB: [REDACTED] SSN: [REDACTED] including, but not limited to, Mr. Harrah's employment file, time

sheets showing hours worked, records of absences, payroll statements, W-2 earning statements, performance evaluations, disciplinary records; mine safety certification records, and supervisory notes.

- (4) The notice of process address for Performance Coal is:

Performance Coal Company, LLC
Legal Department
300 Morgan Massey Drive
Julian, West Virginia 25529

The defendant recognizes his reciprocal discovery obligation under Rule 16 of the Federal Rules of Criminal Procedure to promptly supply the United States with a copy of any records the defendant intends to use at his upcoming sentencing.

The defendant has been previously determined to be indigent, entitled to the appointment of counsel in this matter, and is unable to pay for the witness fees and costs of process necessary to secure the procurement of these documents. Therefore, counsel further requests that any Order granting this Motion direct that any fees of witnesses and the costs of process be paid in the same manner as similar costs and fees are paid in the case of witnesses subpoenaed on behalf of the United States.

Counsel requests that the subpoena direct the Custodian of Records to appear before the Court at a certain date with the requested documents or to otherwise transmit a copy of the requested records to the Clerk of the Courts for the United States District Court for the Southern District of West Virginia, Beckley Division, 110 North Heber Street, Room 119, P.O. Drawer 5009, Beckley, West Virginia 25801 on or before 12:00 p.m. on Friday, May 27, 2011. Counsel would further request that the Court direct the Clerk to provide counsel for the defendant with copies of all documents returned by Performance Coal in response to the subpoena.

For the reasons set forth in this Motion, defendant, Thomas Harrah, moves this Court for the entry of an Order authorizing the issuance of a subpoena, as authorized by F.R.Cr.P. 17(c), to compel the production of the defendant's employment file from Performance Coal Company, LLC.

Respectfully submitted this 13th day of May, 2011.

THOMAS HARRAH

By Counsel

s/ Mary Lou Newberger
Mary Lou Newberger, WV Bar No. 2721
Federal Public Defender
Attorney for Defendant
Office of the Federal Public Defender
United States Courthouse
300 Virginia Street, East, Room 3400
Charleston, WV 25301
Telephone: (304) 347-3350
Facsimile: (304) 347-3356
E-mail: ECF_Newberger@fd.org

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing **DEFENDANT'S MOTION FOR ISSUANCE OF RULE 17(c) SUBPOENA** has been electronically filed with the Clerk of Court this date using the CM/ECF system and served upon opposing counsel as follows:

VIA CM/ECF: Blaire L. Malkin, AUSA
 Office of the United States Attorney
 United States Courthouse, Room 4000
 300 Virginia Street East
 Charleston, West Virginia 25301
 Telephone: (304) 345-2200
 Facsimile: (304) 347-5104
 Email: blair.malkin@usdoj.gov

DATE: May 13, 2011

s/ Mary Lou Newberger
Mary Lou Newberger, WV Bar No. 2721
Federal Public Defender
Attorney for Defendant
Office of the Federal Public Defender
United States Courthouse
300 Virginia Street, East, Room 3400
Charleston, WV 25301
Telephone: (304) 347-3350
Facsimile: (304) 347-3356
E-mail: ECF_Newberger@fd.org